3-3-2008

State v. Lampien Respondent's Brief Dckt. 36115

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 34145
	)	
vs.	)	
	)	
MELANIE LAMPIEN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HONORABLE PETER D. MCDERMOTT
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Melanie Ann Lampien appeals from her conviction for harboring a wanted felon.

Statement of the Facts and Course of the Proceedings

Police trying to serve felony arrest warrants on Nicholas McKenna went to his house and were told by his wife, Lampien, that he was not there. Police and probation officers searched the house for McKenna, who confronted them with a firearm. McKenna fired on the officers, injuring three of them (one of whom was probably saved by his ballistic vest), and the officers returned fire, killing McKenna. (PSI, pp. 2-4, 12-33.[1])

The state charged Lampien with harboring a wanted felon under I.C. § 18-205 for hiding McKenna, who was wanted on an outstanding warrant for a felony probation violation. (R., pp. 21-22.) Lampien pled guilty as charged pursuant to a plea agreement with the state. (R., pp. 34-42, 48-49; Tr., p. 8, L. 13 – p. 17, L. 7.) The district court imposed a sentence of five years with three years determinate. (R., pp. 43-44.) Lampien timely appealed. (R., pp. 50-52.)

[1] Pages of attachments to the PSI are numbered sequentially to the PSI pages.

ISSUES

Due to its length, Lampien's statement of the issues is not reproduced here. The state rephrases the issue as:

1. Is Lampien's claim that McKenna was not a felon for purposes of harboring a felon not properly raised on appeal?

2. Has Lampien failed to show that the district court abused its sentencing discretion?

3. Has Lampien failed to show the district court erred in considering at sentencing statements by the officers wounded by the felon Lampien harbored?

ARGUMENT

I.
Lampien's Challenge To The Charging Document Is Improperly Raised For The First Time On Appeal

A. Introduction

Lampien claims that the state's charging document failed to confer jurisdiction on the trial court. (Appellant's brief, pp. 7-16.) This claim is without merit.

B. Standard of Review

"Whether a court lacks jurisdiction is a question of law that may be raised at any time, and over which appellate courts exercise free review." State v. Jones, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004) (citation omitted). Whether a charging document is legally sufficient is a question of law also subject to free review. Id. The charging document will be read as adequate if at all possible when it is challenged for the first time on appeal. Jones, 140 Idaho at 759, 101 P.3d at 703.

C. The Challenge To The Information Is Not Properly Before The Court And Is Not Timely

Challenges to the language employed in the charging document will not be entertained for the first time on appeal. I.C.R. 12(b); State v. Jones, 140 Idaho 755, 757-58, 101 P.3d 699, 701-02 (2004); State v. Quintero, 141 Idaho 619, 621, 115 P.3d 710, 712 (2005). Lampien did not challenge the language of the charging document within the time-frames required by Rule 12(b) of the Idaho Criminal Rules. Thus, her claim is barred on appeal.

D. Lampien's Claim Was Waived By Entry Of Her Guilty Plea

A guilty plea waives all non-jurisdictional defects. State v. Kelchner, 130 Idaho 37, 39, 936 P.2d 680, 682 (1997); State v. Book, 127 Idaho 352, 354, 900 P.2d 1363, 1365 (1995); State v. Salinas, 134 Idaho 362, 367, 2 P.3d 747, 752 (Ct. App. 2000) (guilty plea waives all non-jurisdictional challenges to conviction for purposes of direct appeal). Because Lampien did not challenge the language of the charging document before entering her guilty plea, she has waived the claim she raises for the first time on appeal.

E. Lampien Has Not Raised A Challenge To The District Court's Jurisdiction

Lampien's claim, that I.C. § 18-205 does not apply to her conduct (Appellant's brief, pp. 7-16), does not raise a claim that the district court lacked jurisdiction. Specifically, she argues that McKenna, who was wanted on felony probation violation arrest warrants, was not a "person who committed such felony or who has been charged with or convicted thereof," I.C. § 18-205. (Appellant's brief, pp. 9-13.) However, interpreting the statute Lampien was charged with and determining whether her conduct violated that statute is exactly what a district court has jurisdiction to do. Lampien's claim that the language of the pleadings deprived the district court of jurisdiction to determine if Lampien's conduct fell within the ambit of the statute alleged in the charging document is nonsensical.

Lampien's argument is also contrary to established law. Under Idaho law the jurisdiction of the district court in a criminal case is properly invoked when the charging document designates the territorial jurisdiction of the court and cites the

statute the state alleges the defendant violated. State v. Quintero, 141 Idaho 619, 622, 115 P.3d 710, 713 (2005). Here the charging document alleges that Lampien violated I.C. § 18-205 in Bannock County, State of Idaho. (R., pp. 21-22.) The state's factual allegations of how she violated the statute are provided in the information to provide notice to Lampien as required to fulfill her right to due process. See Quintero, 141 Idaho at 622, 115 P.3d at 713.

Because the state alleged that Lampien violated a specific section of the Idaho Code within the state of Idaho, it established the jurisdiction of the district court to hear the case. Lampien's claim that she did not actually violate the statute because McKenna was not in fact a person convicted of a felony was exactly the type of claim that the district court had jurisdiction to determine. Lampien's claim that McKenna was not a person convicted of a felony is not properly before this Court on appeal.

II.
Lampien Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

The district court imposed a sentence of five years with three years determinate. (R., pp. 43-44.) Lampien argues this sentence was an abuse of the district court's discretion. (Appellant's brief, pp. 16-20.) Although mitigating factors are present in this case, Lampien has failed to show that the district court's view of the case was unreasonable.

B. Standard of Review

When a sentence is within statutory limits, the appellate court will review only for an abuse of discretion. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). Because the sentence is within statutory limits Lampien has the burden of demonstrating that the sentencing court abused its discretion. Id.

C. Lampien Has Failed To Show That The District Court Abused Its Sentencing Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). To establish that the sentence was excessive, he must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. In determining whether the appellant met his burden, the court considers the entire sentence but, because the decision to release him on parole is exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

Lampien is correct when she argues that there are mitigating factors in this case. As acknowledged by the district court, this is her first felony conviction. (3/19/07 Tr., p. 59, Ls. 23-25.) Nevertheless, the crime she committed is serious. She harbored McKenna, who had been convicted of rape and burglary, and her actions facilitated McKenna and led in part to a violent confrontation between

McKenna and law enforcement in which McKenna was killed and three law enforcement officers injured and one very nearly killed. (3/19/07 Tr., p. 27, L. 25 – p. 35, L. 18; p. 51, L. 1 – p. 53, L. 5; p. 57, L. 13 – p. 58, L. 13.) As noted by the district court, Lampien "set the whole chain of events into motion" by lying to the police and "caused the situation" where McKenna was killed and three officers were shot. (3/19/07 Tr., p. 59, Ls. 12-19.) "It doesn't get any more serious than this." (3/19/07 Tr., p. 59, Ls. 19-20.)

Lampien also argues that she was "the victim of domestic violence and emotional abuse." (Appellant's brief, p. 18.) She cites to nothing in the record to support this claim. In fact, there is nothing in the record to support this claim, made for the first time on appeal. (See 3/19/07 Tr., p. 36, L. 9 – p. 43, L. 23 (defense counsel's sentencing argument, which makes no mention of domestic violence).) Lampien below claimed that the reason for her actions was that she thought McKenna would harm himself. (3/19/07 Tr., p. 35, L. 22 – p. 36, L. 3.) Lampien's argument on appeal is belied by the record.

In imposing sentence the court looked at the statutory penalty, the actions of the defendant, her record, deterrence in the community, and the seriousness of the crime. (3/19/07 Tr., p. 57, L. 9 – p. 60, L. 3.) Although Lampien would have this Court focus on the mitigating factors, when the entirety of the record is considered she has failed to show the sentence excessive under any reasonable view of the facts.

III.
The District Court Properly Took At Sentencing Evidence From The Officers Shot By McKenna When They Attempted To Arrest Him

A. Introduction

At sentencing the court received the comments of the three officers shot by McKenna after Lampien harbored him. (3/19/07 Tr., p. 50, L. 15 – p. 56, L. 18.) Lampien argues on appeal that this was improper because they are not victims as defined by I.C. § 19-5206 and because they were acting, pursuant to I.C. §§ 31-2604 (prosecutor's duties include charging and prosecuting crimes) and 31-2227 (law enforcement duties vested in sheriff and prosecuting attorney), as agents of the prosecutor in contravention of the plea agreement. (Appellant's brief, pp. 20-24.) Neither of these arguments has merit.

B. Standard Of Review

The appellate court presumes that the sentencing court is able to ascertain the relevancy and reliability of the broad range of information and material which is presented to it during the sentencing process. State v. Pierce, 100 Idaho 57, 58, 593 P.2d 392, 393 (1979); State v. Bundy, 122 Idaho 111, 831 P.2d 953 (Ct. App. 1992); State v. Holmes, 104 Idaho 312, 658 P.2d 983 (Ct. App. 1983).

C. Lampien Has Failed To Show Error In The District Court's Determination That The Officers Were Victims

Lampien's objection that the officers were not victims and therefore should not address the court was rejected by the district court. (3/19/07 Tr., p. 50, Ls. 15-23.) A victim, for purposes of the victim's rights statute, is one who "suffers

direct or threatened physical, financial or emotional harm as the result of the commission of a crime ...." I.C. § 19-5306(5)(a). Here the court found that Lampien's crime "caused the situation where three law enforcement officers were shot." (3/19/07 Tr., p. 59, Ls. 16-19.) Lampien has shown no error in the district court's findings. Although McKenna was the one who pulled the trigger, Lampien's crime still victimized the officers by "let[ting] these three officers walk into an ambush. There is no other way to look at this." (3/19/07 Tr., p. 58, Ls. 11-13.) Lampien has failed to show that the district court erred by concluding the officers were victims of Lampien's crime.

Even if the officers were not victims entitled to address the court Lampien has failed to show error. Although I.C. § 19-5306 confers a *right* in victims to address the court, obviously it does not create the only mechanism whereby the court may accept evidence at sentencing. To the contrary, it is well settled that a sentencing court may consider a broad range of information when fashioning an appropriate sentence. State v. Moore, 93 Idaho 14, 17, 454 P.2d 51, 54 (1969); State v. Dunn, 134 Idaho 165, 172, 997 P.2d 626, 633 (Ct. App. 2000); State v. Morgan, 109 Idaho 1040, 1043, 712 P.2d 741, 744 (Ct. App. 1985). A defendant is denied due process when the sentencing court relies upon information that is materially untrue or when the court makes materially false assumptions of fact. Dunn, 134 Idaho at 172, 997 P.2d at 633. Even if the officers did not have a right to address the court, Lampien has shown no violation of *her* rights.

D. Lampien Has Failed To Show That The Officers Addressed The Sentencing Court As Agents Of The Prosecution In Violation Of The Plea Agreement

Lampien also argues[2] that the officers were prohibited from recommending a sentence other than probation because they are agents of the prosecutor, and therefore bound by the plea agreement. (Appellant's brief, pp. 22-24.) The only authority she cites for this proposition is a statute making both the prosecutor and the sheriff responsible for law enforcement in the county. Agency, however, is a factual question. See Caballero v. Wikse, 140 Idaho 329, 92 P.3d 1076 (2004) (question of nature and extent of the authority of an agent is a question of fact). Because Lampien cites to no facts or evidence in the record supporting her claim, she has failed to show that the officers were agents of the prosecution when they addressed the court at her sentencing.

Lampien's argument that the officers were agents of the prosecutor as a matter of law is without merit. That law enforcement officers and prosecutors are both tasked with enforcing laws does not make them agents of each other; to the contrary, both perform very specific and different roles in criminal law enforcement. Lampien's argument that the officers were acting as agents of the prosecutor when they addressed the court in sentencing is without merit.

[2] Lampien has not made, or presented authority in support of, an argument that the state breached the plea agreement in this case. See State v. Jones, 139 Idaho 299, 302, 77 P.3d 988, 991 (Ct. App. 2003) (prosecutor may not undermine recommendations it agreed to give). This issue is therefore not presented for consideration on appeal. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) (to be raised on appeal, issues must be supported by argument and citation to authority).

CONCLUSION

The state respectfully requests this Court to affirm Lampien's conviction and sentence.

DATED this 3rd day of March 2008.

KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of March 2008 I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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